

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1006 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
(No.1 to 5 :: NO)

MANIBEN FAKIRBHAI PATEL

Versus

AMBALAL LAXMIDAS PATEL

Appearance:

MR JP GADHAVI for Petitioners

(MR HL PATEL) for Respondent No. 1

MR MA BUKHARI, ADDL. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 04/03/97

ORAL JUDGEMENT

1. By way of this petition under section 482 of the Code of Criminal Procedure Code, the petitioner seeks direction to quash the criminal complaint being criminal case No.1340/84 pending in the Court of the learned Chief Judicial Magistrate, at Baroda.

2. The petitioner no.1 had entered into partnership with the respondent no.2 and its family members constituting a firm was doing the business of developing land and constructing buildings in the name and style of "Gkyan Yagna Land Development Corporation". The partnership commenced on 28/6/79 and was dissolved on 3/11/1980. There was a arbitration clause under which full and final settlement was arrived at between the parties. It is alleged that the petitioner committed criminal breach of trust in respect of the sum of Rs.1,68,488/- of the fund belonging to the partnership firm by realising from the customers of the firm and not depositing the same with the firm and thus misappropriated the sum.

On this complaint, the learned Judicial Magistrate first Class issued process for offence u/s 406 IPC.

3. I have heard Mr Tirmizi, learned counsel for the petitioner. It is the complainant's own case that the amount of Rs.1,68,488/- pertains to the partnership firm and full and final settlement has arrived at between the parties under the arbitration clause. Thus, if there is any dispute is left out with respect to the recovery of the amount between the partners, it can be settled under the said arbitration clause. Resort to criminal proceedings is nothing but abuse of process of law.

4. In view of the aforesaid, this Criminal Misc. Application is allowed. The criminal case No. 1340/84 pending in the Court of the Chief Judicial Magistrate is

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